

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JAMES RAY PENNY,

Petitioner,

Case Number: 05-70147

v.

HON. GEORGE CARAM STEEH

RAYMOND BOOKER,

Respondent.

**OPINION AND ORDER GRANTING PETITIONER'S
MOTION TO PROCEED *IN FORMA PAUPERIS* ON APPEAL**

Petitioner James Ray Penny filed a *pro se* petition for a writ of habeas corpus. On September 6, 2005, the Court issued an opinion and order dismissing the petition because Petitioner failed to satisfy the “in custody” requirement of 28 U.S.C. § 2254(a). Petitioner subsequently sought a certificate of appealability, which the Court denied. Now before the Court is Petitioner’s Motion to Proceed *In Forma Pauperis* On Appeal.

Federal Rule of Appellate Procedure 24(a)(1) provides that a party to a district-court action who desires to appeal *in forma pauperis* must file a motion in the district court. An appeal may not be taken *in forma pauperis* if the court determines that it is not taken in good faith. 28 U.S.C. § 1915(a)(3). “[T]he standard governing the issuance of a certificate of appealability is more demanding than the standard for determining whether an appeal is in good faith.” U.S. v. Cahill-Masching, 2002 WL 15701, * 3 (N.D. Ill. Jan. 4, 2002). “[T]o determine that an appeal is in good faith, a court need only find that a reasonable person could suppose that the appeal has some merit.” Walker v. O’Brien, 216 F.3d 626, 631 (7th Cir. 2000). While the

Court has held that jurists of reason would not find the Court's determination that Petitioner failed to satisfy the "in custody requirement" to be debatable or wrong, the Court finds that an appeal may be taken in good faith. The Court, therefore, shall grant the Motion to Proceed *In Forma Pauperis* on Appeal.

Accordingly, **IT IS ORDERED** that Petitioner's Motion to Proceed *In Forma Pauperis* on Appeal is **GRANTED**. Dated: July 17, 2006

S/George Caram Steeh

GEORGE CARAM STEEH

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
July 17, 2006, by electronic and/or ordinary mail.

S/Marcia Beauchemin

Deputy Clerk